

2009 DRAFTING REQUEST

Bill

Received: **09/23/2008**

Received By: **jkreye**

Wanted: **Soon**

Identical to LRB:

For: **Administration-Budget**

By/Representing: **Lillethun**

This file may be shown to any legislator: **NO**

Drafter: **jkreye**

May Contact:

Addl. Drafters:

Subject: **Tax, Other - miscellaneous**

Extra Copies:

Submit via email: **NO**

Pre Topic:

DOA:.....Lillethun, BB0096 -

Topic:

Penalties for failure to produce records

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/P1	jkreye 09/24/2008	jdye 09/25/2008	rschluet 09/25/2008	_____	lparisi 09/25/2008		State

FE Sent For:

<END>

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/P1	jkreye	P1 9/25 JLD		_____	_____	_____	_____

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0382

2009-11 Budget Bill Statutory Language Drafting Request

- Topic: Penalties for Failure to Produce Records
- Tracking Code: BB0096
- SBO team: Tax, Transportation and Budget Development Team
- SBO analyst: Chad Lillethun
 - Phone: 266-7597
 - Email: Chad.Lillethun@wisconsin.gov
- Agency acronym: DOR
- Agency number: 566
- Priority (Low, Medium, High): Medium

Intent:

Current statutes do not provide penalties when a taxpayer delays an audit or refuses to produce records during an audit. Because a significant amount of resources are used to obtain records that taxpayers refuse or delay production of, create statutory language that penalizes the taxpayer for the delay or refusal to produce auditor requested records. (See attached description and drafting instructions.)

**2009-2011 Legislative Proposal
Wisconsin Department of Revenue
IS&E Division**

Date: September 15, 2008

PROPOSAL 3: Penalties for Failure to Produce Records

DESCRIPTION OF CURRENT LAW AND PROBLEM

Current Wisconsin statutes do not provide for penalties or consequences when a taxpayer delays an audit or refuses to produce records during an audit. A significant amount of Department of Revenue resources are used to obtain records needed for an audit when taxpayers and practitioners delay or refuse to provide those records.

Other states have addressed this problem with penalties or other consequences for delay or refusal.

Florida – Circuit court having jurisdiction, upon application by the department, issue orders necessary to secure compliance.

Louisiana – In court, taxpayer to show cause why the department should not be permitted to examine books, records or other documents and to enter a judgment of contempt punished according to law.

Mississippi – Taxpayer forfeits right to do business in the state until he complies; commission can proceed by injunction to prevent the continuance of the business, without notice, by a court authorized to grant injunctions.

North Carolina – Failure or refusal is reported to the Attorney General or the district solicitor who institutes proceedings in the court. Taxpayer must show cause before the court as to the failure or refusal. Court can punish for contempt.

Pennsylvania – Guilty of a misdemeanor. Upon conviction \$400 or not more than six months in prison

Texas – Taxpayer immediately forfeits the charter or permit to do business in the state.

Virginia – Guilty of a Class 4 or 2 misdemeanor (depending on tax type). Each month's failure to produce records is a separate offense.

Washington – Gross misdemeanor

Current Wisconsin Law

- Under section 71.74 (2), Wis. Stats., the department may examine or cause to be examined any books, papers, records, etc. and may require the production of documents and require the attendance of any person having knowledge and may take testimony and require proof material.
- Under section 73.03(9), Wis. Stats., the department may summon witnesses to appear and give testimony and produce records and documents relating to any matter which the department has the authority to investigate or determine.
- Under section 73.03(10), Wis. Stats., the department may cause the deposition of witnesses residing within or without the state.

- Under section 77.61(9), Wis. Stats., any person who fails or refuses to file, submit, prepare or retain returns, certificates, forms, reports or data at the time and place and in the manner required, is guilty of a misdemeanor for each such failure or refusal.
- Opportunity for appeal (including any penalties) is provided under Subchapter XIV, Appeals.

RECOMMENDATION FOR ACTION

Create a penalty for failure or refusal to comply with a request of the department for production and inspection of records, failure to give testimony or to respond to competent questions or failure to comply with a subpoena. The penalty would equal 25% of the adjustment resulting from the taxpayer's lack of producing records; minimum penalty for each violation is \$500.

ADMINISTRATIVE IMPACT

Fewer resources will be used to obtain cooperation in audits and voluntary compliance from some taxpayers and practitioners.

FAIRNESS - TAX EQUITY

All taxpayers will be treated fairly and equitably and can expect those who do not cooperate with the Department of Revenue to be penalized.

IMPACT ON ECONOMIC DEVELOPMENT None

FISCAL EFFECT Minimal

DRAFTING INSTRUCTIONS

Amend Section 71.80 and 77.61, Wis. Stats., Administrative Provisions.

Failure to produce records supporting amounts or information shown on a return may result in any of the following as determined by the Secretary of Revenue or his or her delegate:

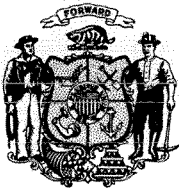
- The disallowance of claimed deductions, credits, or exemptions to which the requested records relate.
- A 25% penalty would be imposed on the adjustment resulting from the taxpayer's lack of producing records with a minimum penalty for each violation of \$500.

EFFECTIVE DATE AND/OR INITIAL APPLICABILITY Day after publication

INTERESTED/AFFECTED PARTIES Tax practitioners in Wisconsin

DOR CONTACT PERSON
Diane Hardt, Division Administrator
(608) 266-6798

PREPARED BY
Lili Crane



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0382/P1

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DOA:.....Lillethun, BB0096 -[✓]Penalties for failure to produce records
FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

in 9-24-08

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AN ACT ...; relating to: the budget.[✓]

Analysis by the Legislative Reference Bureau

TAXATION[✓]

OTHER TAXATION[✓]

Under current law,[✓] DOR may require a person to produce records or documents related to any matter that DOR has authority to investigate or for which DOR must make a determination.[✓] This bill provides that a person who fails to provide records or documents to DOR that support amounts or other information shown on any income or franchise tax return[✓] or any sales and use tax return[✓] is subject to any of the following, as determined by DOR:[✓]

1. The disallowance of[✓] deductions, credits, or exemptions to which the requested records relate.[✓]

2. A penalty for each violation that is equal to the greater of \$500[✓] or 25[✓] percent of the amount of any adjustment by DOR[✓] that results from the person's failure to produce the records.

For further information see the[✓]state fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 71.80 (9m) of the statutes is created to read:

71.80 (9m) FAILURE TO PRODUCE RECORDS. A person who fails to produce records or documents, as provided under ss. 71.74 (2) and 73.03 (9), that support amounts or other information shown on any return required under this chapter may be subject to any of the following, as determined by the department:

(a) The [✓]disallowance of deductions, credits, or exemptions to which the requested records relate.

(b) In addition to any penalty imposed under sub. (4), a penalty for each violation of this subsection that is equal to the greater of \$500 or 25 percent of the amount of any adjustment by the department that results from the person's failure to produce the records.

SECTION 2. 77.61 (16) of the statutes is created to read:

77.61 (16) A person who fails to produce records or documents, as provided under s. 73.03 (9), that support amounts or other information shown on a return required under s. 77.58 may be subject to any of the following, as determined by the department:

(a) The [✓]disallowance of deductions, credits, or exemptions to which the requested records relate.

(b) A penalty for each violation of this subsection that is equal to the greater of \$500 or 25 percent of the amount of any adjustment by the department that results from the person's failure to produce the records.

(END)



State of Wisconsin
2009 - 2010 LEGISLATURE

LRB-0382/P1

JK:jld:rs

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FOR 2009-11 BUDGET -- NOT READY FOR INTRODUCTION

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(b) A penalty for each violation of this subsection that is equal to the greater of \$500 or 25 percent of the amount of any adjustment by the department that results from the person's failure to produce the records.

(END)